



Australian Government
Australian Public Service Commission

I Whittaker

By email: foi+request-4241-574c4c86@righttoknow.org.au

Our reference: C17/2291

Dear Whittaker,

Decision on your Freedom of Information Request

I refer to your request dated 8 December 2017, seeking access to documents held by the Australian Public Service Commission (the **Commission**) under the *Freedom of Information Act 1982* (the **FOI Act**).

You have requested access to the following:

I'd like to make an FOI request for a copy of the briefing notes/Q and As/talking points document prepared for APSC officials for their attendance before the additional/spill over senate estimates session yesterday, 8 December 2017: as set out here:
https://www.aph.gov.au/~media/Estimates/fpa/supp1718/fpa_Dec07.pdf?la=en

On the same date, you wrote to the Commission and sought to amend your request, as follows:

Apologies - I meant the 7th of December, not the 8th.

I confirm that my decision is based on your revised request as transcribed above.

Documents relevant to your request

Searches of the Commission's records show two documents falling within the scope of your request.

My Decision

This letter sets out my decision on your FOI request and provides the reasons for my decision. I am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to FOI requests.

Having considered the documents within the scope of your request, I have determined that it is suitable for release in full save for the deletion of irrelevant material, see below for my reasons. A copy of each document is attached to this letter.

Deletion of irrelevant material

Section 22 of the FOI Act provides that where a decision is made to give access to a document which contains material that would reasonably be regarded as irrelevant to the request, that the documents may be edited to delete the irrelevant material.

The documents you have been granted access to contain material which I consider would be reasonably regarded as irrelevant to your request. I have therefore deleted this material from the documents.

Review Rights

You are entitled to seek review of this decision. Your rights are set out at **Attachment A** to this letter.

Contacts

If you require clarification of any of the matters discussed in this letter you should contact the Commission's FOI Officer by email at foi@apsc.gov.au.

Yours sincerely,



Acting General Counsel
Authorised FOI decision maker
22 December 2017

REVIEW RIGHTS

If you are dissatisfied with this decision, you have certain rights of review available to you.

Internal Review

Section 54 of the *Freedom of Information Act 1982* (FOI Act) gives you a right to apply for an internal review of this decision. The review will be conducted by a different person to the person who made the original decision.

If you wish to seek an internal review of this decision you must apply for the review, in writing, by whichever date is the later between:

- 30 days of you receiving this notice; or
- 15 days of you receiving the documents to which you have been granted access.

No particular form is required for an application for internal review, but to assist the decision-maker you should clearly outline the grounds upon which you consider the decision should be reviewed.

Applications for internal review can be lodged in one of the following ways:

Email: foi@apsc.gov.au

Post: The FOI Coordinator
Australian Public Service Commission
B Block, Treasury Building
Parkes Place West
PARKES ACT 2600

If you choose to seek an internal review, you will subsequently have a right to apply to the Australian Information Commission for review of the internal review decision if required.

Review by the Office of the Australian Information Commissioner

Section 54L of the FOI Act gives you a right to apply directly to the Australian Information Commissioner (the Information Commissioner) for review of certain decisions made under the FOI Act. If you wish to have the decision reviewed by the Information Commissioner you must apply for the review within 60 days of receiving this notice (decision).

The Information Commissioner is an independent office holder who may review decisions of agencies and Ministers under the FOI Act. More information is available on the Australian Information Commissioner's website www.oaic.gov.au.

To assist the Information Commissioner, your application should include a copy of this decision and your contact details. You should also clearly set out why you are objecting to the decision.

You can also complain to the Information Commissioner about how an agency handled an FOI request, or about other actions the agency took under the FOI Act.

You can contact the Information Commissioner to request a review of a decision or lodge a complaint in one of the following ways:

Email: enquiries@oaic.gov.au

Post: GPO Box 2999
CANBERRA ACT 2601

The Commonwealth Ombudsman

You can complain to the Commonwealth Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act.

The Ombudsman will consult with the Information Commissioner before investigating a complaint about the handling of an FOI request.

A complaint to the Commonwealth Ombudsman may be made orally or in writing. No particular form is required to make a complaint to the Ombudsman, but the request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the FOI request should be investigated. The Ombudsman may be contacted in one of the following ways:

Email: ombudsman@ombudsman.gov.au

Post: 1300 362 072 (local call charge)

DOMESTIC VIOLENCE LEAVE

The Government's Approach to Family and Domestic Violence Leave

- Family and Domestic violence is a significant issue that the APS, as an employer, takes seriously and deals with sensitively.
- Creating a specific leave type for employees suffering domestic violence does not solve the fundamental issue.
- There are a wide range of existing support mechanisms available to employees who are dealing with domestic violence issues.
- Existing leave types, such as personal leave and uncapped miscellaneous leave, are available for use as required.
- Agencies already provide a range of useful, practical support to employees such as access to counselling and support services, flexible work arrangements and personal safety assistance.
- The Government's Workplace Bargaining Policy does not require agencies to remove provisions which provide employees with access to leave if they are adversely affected by family or domestic violence.
- A small number of APS agreements contain references to domestic violence in leave provisions. Where such leave exists, the Policy does not require its removal.
- Agencies that do not specifically mention leave for domestic violence have been, and remain, committed to providing support for employees. This support includes the granting of personal and miscellaneous leave as appropriate.
- The APSC has provided agencies with a template Family and Domestic Violence Framework to encourage best practice in supporting affected employees.

The Modern Award Review:

- The Fair Work Commission is currently reviewing modern awards. It has made a preliminary decision to include unpaid domestic violence leave in all modern awards.
- The FWC requested a submission from the APSC about whether such a decision should apply to the *Australian Government Industry Award 2015*, which covers Commonwealth employees who are not employed under the *Public Service Act 1999*.

Contact Officer: Marco Spaccavento	Phone: s22	Date Created: 5 October 2017	Date Updated: 6 December 2017
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- The APSC's submission did not support the inclusion of family and domestic violence leave in the *Australian Government Industry Award 2016*. It submitted that:
 - a high level of support is currently provided to Commonwealth employees through existing arrangements; and
 - it has privacy and safety concerns regarding providing domestic and family violence leave as a distinct leave type.
- The FWC is continuing to consider this issue.

Background

Enterprise Bargaining Process:

- Four enterprise agreements in operation retain clauses relating to domestic violence leave:
 - Workplace Gender Equality Agency;
 - Department of Employment;
 - Department of Education; and
 - National Disability Insurance Agency.
- The first three of these agreements include clauses that allow employees to access personal carer's leave if affected by domestic violence.
- The National Disability Insurance Agency agreement contains a reference to domestic violence in its miscellaneous leave clause.
- The Department of Social Services and the Australian Institute of Family Studies did not include domestic violence leave in their new enterprise agreements. Employees can still access these provisions through policy.

Opposition press release on changes to the National Employment Standards

- The Opposition has committed to pass legislation to include 10 days paid Family and Domestic Violence Leave in the National Employment Standards if they are elected.
- As they are a legislative minimum, if the National Employment Standards changed then the proposed 10 days of paid domestic violence leave would become available to all employees, including APS employees.
- In its press release, the Opposition stated that in 2016, the Government's Workplace Bargaining Policy had prevented approximately 30 agencies from including Family and Domestic Violence leave in their enterprise agreements. The press release mentions the Department of Prime Minister and Cabinet specifically.
- The Policy does not require the removal of existing references to family and domestic violence leave, but does not allow the inclusion of new entitlements.

Modern Award Review:

- The Fair Work Commission is considering the inclusion of family and domestic violence leave in Awards.
- It made a preliminary decision to include family and domestic violence leave on an unpaid basis and formed the view that employees should be able to access personal/carer's leave for the purpose of taking family and domestic violence leave.
- The Fair Work Commission is considering a model clause for insertion into modern awards.
- If this preliminary decision is confirmed, the Fair Work Commission will then decide whether to insert the provision into relevant Awards, including the *Australian Government Industry Award 2016*. Interested parties will have the opportunity to make submissions on the issue.
- The APSC has, at the Fair Work Commission's request, provided a submission on the inclusion of these provisions in the *Australian Government Industry Award 2016*, stating that:
 - Commonwealth employers currently provide a broad range of assistance to affected employees;
 - A specific leave provision may limit what leave is available to employees and negatively impact on their privacy; and,

- A specific leave provision may increase agencies' obligations during bargaining under the Better Off Overall Test.
- The Fair Work Commission has indicated that the application of this provision to enterprise awards, including the *Australian Public Service Enterprise Award 2015*, will not be considered until after the modern industry awards are substantially dealt with.
- Most Commonwealth agencies have enterprise agreements, and so it is unlikely that any decision will have an impact on current arrangements.

SEXUAL HARASSMENT IN THE AUSTRALIAN PUBLIC SERVICE

- Like all of us, I am concerned by the wave of complaints of sexual harassment made against prominent figures in the community.
- As a major employer, the Government has a responsibility to be sure that the people who work for us are not also the subject of sexual harassment in the workplace.
- I have raised this issue with the Acting Australian Public Service Commissioner.
- I am advised that she and Dr Parkinson have addressed all Secretaries, asking them to ensure that the arrangements they in place in their agencies to deal with this issue are appropriate, accessible to their staff, and up to date.
- Policies and procedures are in place to protect public servants from sexual harassment and to allow them to report it when it does happen.
- Since the mid-1980s APS agencies have been required to develop and implement strong policies prohibiting sexual harassment of any kind in the workplace.
- Sexual harassment is a breach of the APS Code of Conduct, and harassers can be fired from their employment.
- Staff also have access to workplace-based resources who can give them advice about their options to report harassment and provide them with support through that process.
- Staff can make reports of sexual harassment within the agency, to the Merit Protection Commissioner, and to the Human Rights Commission.
- The information that we have indicates that sexual harassment in the APS is at a very low level. In 2016-2017, only 0.4% of employees reported that they had been the subject of sexual harassment. A quarter of those were men.
- Since 2014-15, the Merit Protection Commissioner has only received two complaints alleging sexual harassment.

Contact Officer: Kerren Crosthwaite	Phone: s22	Date Created: 6 December 2017	Date Updated:
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Background

- The incidence of sexual harassment in Australian Public Service workplaces appears to be very low.
- In the 2016-2017 Australian Public Service employee census only 0.4% of employees reported that they had been the subject of sexual harassment. Roughly a quarter of those staff were male.
- The data indicated that staff were most commonly harassed by co-workers and relatively uncommonly by their manager.
- The level of complaints of sexual harassment to the Merit Protection Commissioner is also very low. Only two cases in the last three years have alleged sexual harassment. One of those cases was rejected, the other is still under consideration.
- The Australian Human Rights Commission does not keep disaggregated data allowing us to identify the incidence of complaints to that agency from APS employees, but it is unlikely to be high.
- APS agencies have had sexual harassment, or latterly workplace harassment, policies in place since the mid 1980s following amendments to the Public Service Act and the passage of the *Sex Discrimination Act 1984*.
- Employees can make sexual harassment complaints under the:
 - *Public Service Act 1999*
 - *Public Interest Disclosure Act 2013*
 - *Sex Discrimination Act 1984*
- APS agencies have developed networks of Harassment Contact Officers who act as points of contact in the workplace, supplying employees who have been harassed with information and support.